

1.0 LAND USE AND ZONING

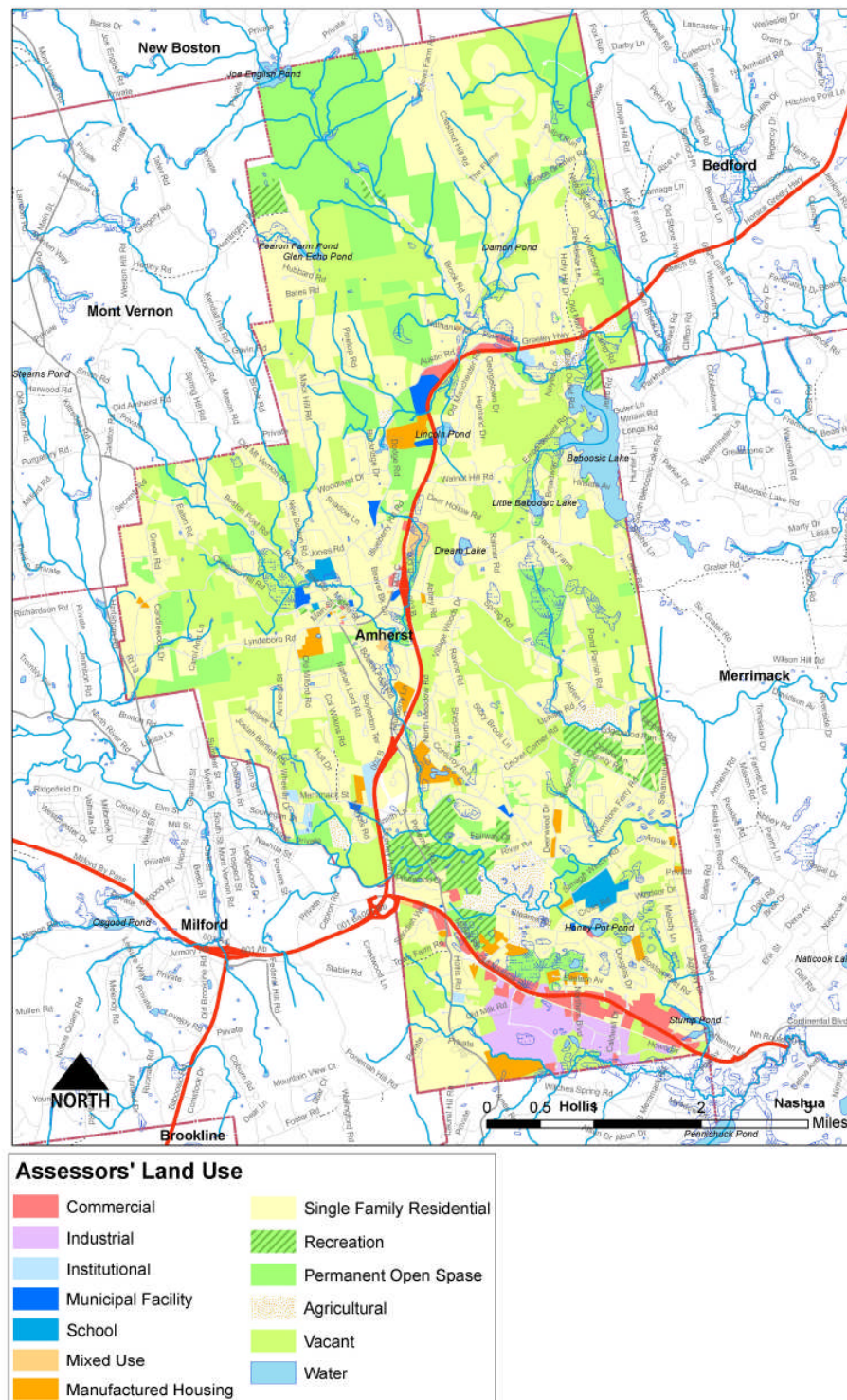
1.1 Existing Land Use Patterns

For the most part, current land uses reflect the underlying zoning, with industrial uses concentrated off of Route 101A, commercial and office uses along Route 101A and along Route 101 north of Baboosic Spring Road and around Salzburg Square. Almost 50% of the Town is in residential use and 18% of the Town is existing open space, including agricultural, recreation, and conservation properties. According to an analysis of the Town's parcel database, approximately 23% of the properties in Town are vacant and considered developable barring any existing environmental or regulatory constraints to development.

Table 1: Amherst Land Use Distribution

	Acres	Percent
Agricultural	395.3	1.8%
Multi Family Residential	305.1	1.4%
Manufactured Housing	12.7	0.1%
Single Family Residential	10,111.7	46.0%
Commercial	312.8	1.4%
Mixed Use	46.5	0.2%
Industrial	351.5	1.6%
Institutional	69.1	0.3%
Municipal Facility	84.1	0.4%
School	98.0	0.4%
Permanent Open Space	2,965.5	13.5%
Recreation	644.1	2.9%
Vacant	4,976.8	22.6%

The map on the next page shows the pronounced residential and open space character of Amherst. There are large tracts of protected open space and large tracts of vacant land throughout the town. Commercial and industrial development is confined to the southern Route 101A east-west corridor, with a few commercial uses in Amherst Village and along Route 101. The many



streams and water bodies are also shown on this map. The mixed use areas shown in light-orange-beige are areas of multi-family dwellings. The one manufactured housing area shown in darker orange is Amherst Gardens, a mobile home park on Boston Road. Zoning Districts

1.2 Existing Zoning

The Town of Amherst created its first zoning districts in 1946. The Village District included “all land lying within a radius of one mile from the Town Hall,” and the Roadside District included all land “outside the Village District which is adjacent to Routes 101, 101A and 122 to the depth of 500 feet from the center line of said routes.”¹ The Village District was intended as a primarily residential district allowing for new businesses only by approval of the Board of Adjustment. The District regulations also restricted additions of multiple family dwellings. The Roadside District, on the other hand, did not restrict uses except for those considered offensive (“dumps, abandoned vehicles, or discarded material”).

It was not until 1963 that the Town adopted the first of its current primary zoning districts, the Commercial Zone.² Today the Town has seven primary zoning districts and six overlay districts (listed in Table 2.)

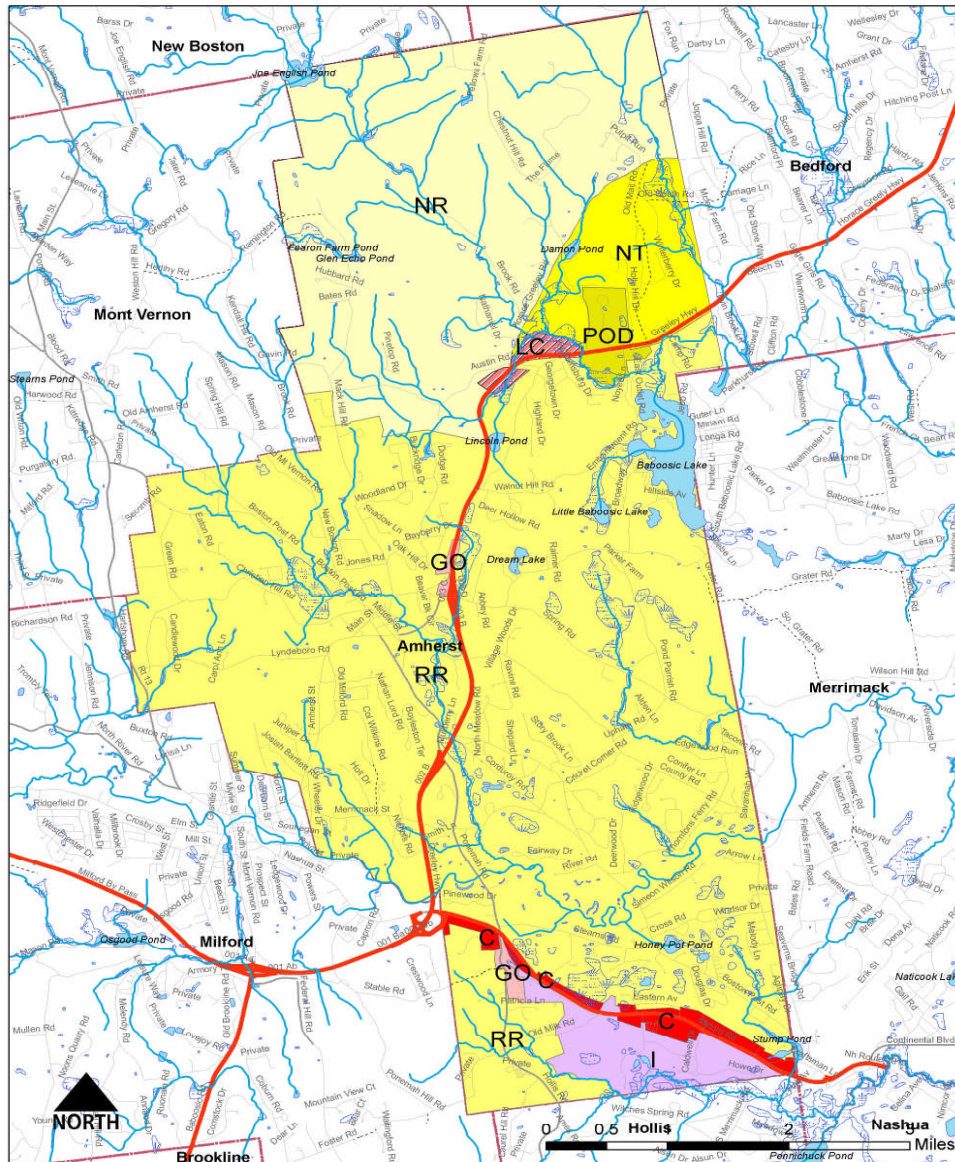
Table 2: Amherst’s Zoning Districts

Primary Zoning Districts	
Commercial	C
General Office	GO
Industrial	I
Limited Commercial	LC
Northern Rural	NR
Northern Transitional	NTR
Residential / Rural	RR
Overlay Districts	
Aquifer Conservation	AC
Flood Plain Conservation	FP
Historic	HD
Wetland Conservation	W
Watershed Protection	WP
Planned Office Development	POD

¹ Zoning Ordinance of Amherst, NH, adopted March 12, 1946.

² Ordinances, Bylaws, and Regulations for the Town of Amherst, Section A: Zoning Ordinance, March 2007.

The current zoning map is shown below. District names are shown on Table 1.



1.2.1 Residential Districts

More than 91% of the Town is located in residential zones at fairly low development densities. The Residential/Rural Zone includes sections of Town on the east and west of Route 101 south of the intersection of Horace Greeley Road and Austin Road and north of Route 101A. The RR Zone covers approximately 14,000 acres (63% of the Town) and is primarily single-family uses on large lots (minimum lot size is 2 acres). The Northern Rural Zone covers approximately 24% of the Town north of High Meadows Lane and west of Horace Greeley Road and allows primarily large-lot single-family uses (5 or more acres). The smaller Northern Transitional Zone requires a 3.5 acre minimum for single family uses and is located between Route 101 and Horace Greeley Road, excluding the Limited Commercial Zone around Salzburg Square.

1.2.2 Non-Residential Districts

Commercial and industrial zones comprise the remaining 7% of the land in Amherst and are located along some of the key transportation corridors in the Town, including Routes 101 and 101A. The Commercial Zone, located along Route 101A allows uses intended to serve the major commercial and business needs of the general public. The Limited Commercial Zone is located on Route 101 in the north of Town and allows uses intended to serve local commercial needs. The General Office, for professional and business offices and excluding retail uses, and the Industrial Zone are located off of Route 101A, as well.

1.2.3 Overlay Districts

Historic District

This overlay district is located in Amherst Village, encompassing an area of approximately 623 acres. Construction, maintenance, and rehabilitation of properties in the district are regulated by the Historic District Commission, which reviews all building permits in the district. The Commission makes a determination based on review standards that consider the compatibility of proposed alterations with the historic character of the area.

Environmental Resource Overlay Districts

Amherst has established four overlay districts to regulate land uses within aquifer areas, floodplains, wetland areas, and watersheds in order to protect natural resources and promote public health, safety and welfare. The aquifer conservation district is determined by the United States Geological Survey (USGS). The floodplain district governs uses within the 100 year flood boundary as determined by the National Flood Insurance Program. The

wetland district limits uses within 50 to 75 feet of a wetland. The watershed protection district prohibits most development within 100 feet of a body of water.

Planned Office Development Overlay District

The Planned Office Development Zone is an overlay located along Route 101 near the Bedford Town Line. The zone is intended to provide office buildings within a park like setting. Currently the area contains residential uses on the north side of Route 101, while the southern side is largely vacant. The POD zone has design review criteria and procedures that dictate building materials, colors, lighting, and pedestrian access requirements. The zone comprises 199.4 acres, or roughly .09% of the town. For all practical purposes this overlay zone is currently built out. The residential area to the north of Route 101 is built along Saddle Hill Road. On the south side of Route 101 the area is just west of Lake Outlet Road and contains wetlands and a stream bed in addition to a few homes.

1.3 Innovative Land Use Provisions

Affordable Housing

The “Innovative Land Use Control for Affordable Housing” was adopted by the Town in 1989 and amended in 2004. The regulation’s intent is to encourage development of affordable housing by allowing the Planning Board to approve a conditional use permit and a waiver of certain zoning requirements provided the project meets certain criteria.

In order for the Planning Board to consider an affordable housing conditional use permit, the project must apply for a nonresidential site plan review permit. The dwelling units approved through this process must be sold or leased to persons who make 100% of area median income or less. The maximum number of units approved under this ordinance cannot exceed 1% of the total number of dwelling units town-wide.

Any properties considered for this use must have 4 to 15 acres of developable upland area (10 to 20 acres in the NR zone), excluding the required minimum lot size for existing dwellings. Once the project has been approved for this use, the Planning Board may reduce the required lot size, density, setbacks, and open space requirements according to certain minimum limitations set forth in the ordinance.

According to the Town Planning Director, the affordable housing regulation has been approved for 12 to 18 projects since it was established in 1989. It

has been amended a number of times since then, but with no substantial changes to the intent of the ordinance.

Open Space Plan

Allowed by conditional use permit, the Open Space Plan provision was adopted in its current form in 2004, although previous regulations for this type of development had been included in the Zoning Ordinance since 1982. These regulations provide for single family developments that are developed at a greater density than is otherwise permitted in exchange for preservation of areas of uninterrupted open space and reduction in the amount of roadways needed to be maintained by the Town.

Such developments are permitted on parcels with a minimum of 10 acres in the RR zone and 25 acres in the NR and NT zones. Lots within these parcels must be a minimum of 40,000 square feet of upland on slopes no greater than 20% in all of these zones, with an average minimum lot area requirement of 80,000 square feet in the NR and NT zones (average minimum lot area requirement allows some lots to be less than 40,000 square feet as long as the average of all of the lots in the development is at least 80,000 square feet).³

The required open space set aside in these developments is 75% of the number of lots in RR zones and 2% in NR and NT [NOTE: The Zoning is unclear here, does it mean the total area for the basic number of lots?]. Open space provided to meet this requirement must be suitable for outdoor non-commercial recreation and conservation.

According to the Town's Planning Director, this type of permit has been used minimally since its adoption (perhaps 3 or 4 times). This is likely due to the fact that the only incentive for this type of development is a reduction in the frontage requirement permitted under conventional zoning: all other dimensional regulations are the same or more restrictive than the underlying zoning.

Planned Residential Development

The Planned Residential Development provision (PRD), adopted in 1989, allows for a conditional use permit for developments in the RR, NR, NT and Commercial zones that protect open space while providing a diversity of housing types for different household types and economic levels. Conditions of approval of such a development are at the discretion of the Planning Board and are based on the criteria outlined in the regulation's purpose statement.

³ Lots used to calculate the average cannot exceed 5 acres in area.

Minimum area for the proposed development must be 20 acres of upland for the RR and Commercial districts, 30 for the NR district, and 25 for the NT district. Required development densities are based on the soil limitations for development (higher density for soils with slight limitations and lower density for soils with moderate limitations). Density calculations are determined by the number of bedrooms. The Planning Board may grant density bonuses for certain aspects of the development that further the objectives of the regulations (including provision of recreation and conservation facilities, phasing of the development, provision of low and moderate cost housing, and a mix of housing types).

The PRD allows for single family and multi-family uses, with the appropriate mix of housing types to be determined by the Planning Board on a site-specific basis. Forty percent of the development must be open space that can be used as parkland, recreation or conservation uses, or agricultural uses. The Planning Board also has the right to require architectural design that is “harmonious” with the surrounding neighborhood.

Because the regulations have a greater degree of flexibility and provide for the Planning Board to grant density bonuses, the PRD is used more frequently than the Open Space Plan.

Mixed Use Development

A provision adopted in 1989 allows any commercial development to include residential units up to a maximum of 25% of the development’s approved gross floor area. Such proposals are subject site review approval by the Planning Board.

According to the Town’s Planning Director, the mixed use provision was intended to promote more commercial development. Salzburg Square and Liberty Park were originally approved as mixed use developments, but the residential components were later converted to office space.

Impact Fees

In 2004, the Town adopted an Impact Fee Ordinance. The purpose of this ordinance was to enable the Planning Board, as a condition of approval for a development, to require an applicant to pay a fair share of any required off-site improvements to public facilities and infrastructure affected by the development from which the development will benefit. By instituting an impact fee provision, this ordinance is intended to help prevent “scattered or premature development” in areas where existing public services and

infrastructure may be inadequate to sustain the development's impact and to prevent the excessive expenditure of public funds to provide these. The types of public facilities for which impact fees can be assessed are limited to those covered by the state law regulating impact fees, and include water supply, sewage disposal, drainage, schools, public safety, municipal offices, solid waste management, libraries, and recreational facilities (excluding public open space).

In order for a community to enact an impact fee ordinance, it must also have enacted a capital improvements program, which is intended to assist in developing an annual town budget. Amherst has established a capital improvement program committee which consists of members of a number of other town committees and offices as well a citizen at large appointed by the Board of Selectmen. Although a CIP plan was completed in the late 1980s and has had subsequent revisions, the plan does not address school costs, which are approximately 90% of the Town's annual budget.

In order for an impact fee to be valid, there must be a *rational nexus* between the fee and the needs created by development; that is, the amount of the fee should be proportionate to the service demand generated by the development. The goal of such an analysis, usually conducted by a professional, is to determine a fee that balances needs that are *specifically and uniquely attributable* to the new development and needs that are *reasonably related* to the development. There has been discussion of hiring a professional to conduct a rational nexus analysis for the Town.

Nonconforming Lots

Nonconforming lots are properties which do not conform to existing zoning regulations including lot area, frontage or other dimensional requirements. In Amherst, a number of lots around Baboosic Lake are nonconforming because of their small lot sizes, which are typically around a quarter of an acre. Many of these lots, developed as seasonal camps or cottages in the late 1800s, are being converted to year-round use. Issues have arisen related to their small lot size because there is no room to accommodate on-site septic systems and wells. The Town is building a community septic system with a grant from the NH Department of Environmental Services and payments from the property owners. Other areas of town where nonconforming lots exist include the village area and Route 101A.

Nonconforming lots and uses are regulated by Article 3 of the Zoning Ordinance, which provides some expansion or alteration of the existing

property's use or setback provided these do not increase the degree of non-compliance.

1.4 Other Land Use Controls

Sign Regulations

The sign regulations, adopted in 1991, are intended to maintain a character of development that is compatible with the Town's rural heritage.

With certain exceptions (historical markers, flags, on-premise directional signs, and non-illuminated private signs less than 2 feet square, and temporary lawn signs), most signs in Town require a permit. In addition, signs cannot be illuminated, cannot include moving or revolving devices and cannot be portable. Specific regulations are provided for a variety of signs used for different purposes and on different locations.

Scenic Roads

The Town has designated 16 scenic roads. Such roads are subject to the requirements of the New Hampshire statute governing scenic roads. This statute provides for Planning Board approval of any road work that involves the cutting or removal of trees or tearing down or destruction of stone walls.

In addition to the scenic road requirements, the Zoning Ordinance establishes a scenic setback of 100 feet along designated scenic roads and 11 other designated roads. No development can occur within this setback regardless of the underlying zoning requirements.

Personal Wireless Service Facilities

Adopted in 1999, this section of the ordinance requires personal wireless service carriers to locate facilities within designated areas of the Town according to certain dimensional requirements and design standards. The intent is to locate these facilities so as not to interfere with scenic view corridors. No new facilities can be built unless it has been determined that there are no suitable existing structures.

Farming

To support the agricultural heritage of the Town, Amherst adopted a right to farm ordinance in 2005. This section states that farming is a permitted use and can include the use of necessary machines and equipment, application of fertilizers, grazing of livestock, and raising of fowl and may take place on holidays, weekends during the nighttime or daytime. Such regulations are intended to support farming as a commercial enterprise and recognize that,

in order to be successful, the Town residents must tolerate certain practices not normally allowed for other types of commercial or industrial activities. All agricultural activities must comply with the state's *Manual of Best Management Practices for Agriculture*.

Subdivision Regulations

The subdivision regulations set forth the rules for the division of land. State law defines the division of a land tract into two parcels as a subdivision. The Town has procedures that enable a less exhaustive review process for "minor subdivision," which are those that involve the division of one property into three or less parcels.

The subdivision regulations require the Planning Board to conduct a design review, which calls for the preservation of existing features including: trees, scenic ponds, brooks, streams, rock outcroppings, water bodies, natural resources, historic landmarks, and stone walls.

The regulations are consistent with roadway specifications adopted in 1971. Street design requirements consider pre-existing street patterns, require 150' turning radius for cul-de-sacs, and construction requirements. The regulations permit the construction of private roads provided that disclaimer language is added to the plan warning future buyers that the Town does not intend to improve these roadways in the future. The subdivision regulations allow for limited zoning flexibility primarily in the form of reduced frontage in order to access back lots.

1.5 Site Design

Parking

Moved from the Zoning Ordinance in 2003, off-street parking requirements are regulated by the Planning Board under the nonresidential site plan review process. According to the Planning Director, there have been discussions that some of the requirements for commercial properties may be excessive.

Landscaping

Adopted in 2000, landscaping standards are part of the nonresidential site plan review process. These standards are applied to developments to improve the visual appearance of outdoor areas and can also aid in offsetting adverse impacts from lighting glare and noise and other potential conflicts between abutting properties.

Outdoor Lighting

Adopted in 2000, the outdoor lighting guidelines are part of the nonresidential site plan review process. The guidelines are intended to provide a uniform distribution of light within the site, limit the amount of light that travels off-site, and ensure complimentary design of lighting fixtures and poles. According to the Planning Director, it is common for applicants to request a waiver for these guidelines for the height limit and the number of poles required.

1.6 Land Use and Zoning Issues

Variances

Based on discussion with the Planning Director and a review of the Zoning Board of Adjustment report in the Town's Annual Report for 2006, it is common for variance applicants to receive approval from the Zoning Board of Adjustment. Of 17 applications for variances acted on in 2006, only one was denied. This may indicate that adjustment of certain zoning requirements is appropriate, although further analysis would be necessary to determine which provisions are most commonly varied.

Nonconforming Lots

As noted above, a number of seasonal homes along Baboosic Lake are being converted to year-round houses. While the Town's regulations prohibit conversion of these properties without the addition of a new septic system, this is not always enforced.

Design of New Development

Developments in the General Office district must receive approval for their exterior architectural design, and the Historic Overlay District guides the character of development in that district. Design review is not required in other zoning districts, and residents have expressed concern about the general design of developments located in other areas of Town. Providing additional design guidelines or standards in each zoning district would assist the Town to preserve a character of development that is consistent with its rural heritage.

1.7 General Zoning Ordinance Organization

Used by the general public, private developers, and municipal officials, zoning ordinances should clearly articulate land use regulations and guidelines. There are a number of ways that Amherst's zoning ordinance could be improved to reduce confusion for users.

Definitions

The definitions section should be used only to define terms. Dimensional and use regulations should be removed from this section. Certain conditional use permit regulations included in the definitions section should also be moved into the body of the ordinance, specifically, mixed use development, open space plan, and planned residential development.

All definitions should be consolidated into one section (the Signs, Historic District and Floodplain District provisions currently have separate definitions sections).

Use Table

The Town should consider including a table of uses that lists all land uses and indicates whether they are prohibited or permitted by right, special exception, or conditional use permit in each zoning district.

Codification

All relevant zoning regulations (Articles IV through IX) could be consolidated into one Zoning Ordinance. A potential reorganization could be as follows:

Article IV Zoning

Section 4-1 General: Authority, Application, Interpretations, etc.

Section 4-2 Administration

Section 4-3 Districts

4-3.1 Use Regulations

4-3.2 Dimensional Regulations

Section 4-4 Supplementary Regulations

4-4.1 Personal Wireless

4-4.2 Equestrian Facilities

4-4.3 Farming

4-4.4 Scenic Setbacks

4-4.5 Home Occupations

Section 4-5 Overlay Districts

4-5.1 Floodplain

4-5.2 Wetland

4-5.3 Watershed

4-5.4 Aquifer

4-5.5 Historic

Section 4-6 Innovative Land Use Controls

4-6.1 Open Space Plan

4-6.2 Planned Residential Development

4-6.3 Affordable Housing

Section 4.7	Impact Fees
Section 4.8	Definitions